

REMARKS/ARGUMENTS

Claim 1 has been revised to emphasize an inherent feature of the method as claimed and disclosed, where a virus or virus-like particle is administered. This is in contradistinction to situations where a cell is administered. Similarly, claim 19 has been revised to emphasize an inherent feature of preparing particles for administration. Support for the revisions is found at least in Example 3 (pages 16-17) of the application as filed, which describes the isolation and purification of biological particles from cells that produce them.

Claim 8 has been revised to remove the term “tumor-derived”.

The claim revisions are necessitated by the Office’s positions as revealed in the Action mailed August 29, 2008. In particular, the revision to claim 8, which was not previously rejected under any express grounds, is necessitated by the Office’s Action. Applicant respectfully points out that the revisions should be entered because they, at a minimum, reduce the issues for appeal by resolving language in claim 8.

Shown at least by the situation of claim 8, the revisions could not have been previously presented. Additionally, no new issue for search or consideration is present.

No new matter has been introduced, and entry of the above revised claims is respectfully requested.

Premature imposition of “final” status

Applicant respectfully point out that the imposition of “final” status in the Action mailed August 29, 2008 is premature because there was at least one new grounds of rejection that was not necessitated by amendment. Specifically, claim 8, which previously depended from claim 1, is now rejected solely for an alleged issue of indefiniteness. But claim 8 was **not** previously expressly rejected for any reason in the previous Office Action (see Applicant’s last response filed May 19, 2008 on pages 8-9).

The scope of claim 8 has not changed between the date of the non-final Action mailed January 17, 2008 and the present time because it was simply revised in May 19, 2008 to be

written in independent form. No change in claim scope means that the current rejection of claim 8 could not have been “necessitated by amendment.”

In light of the foregoing, the finality of the Action mailed August 29, 2008 should be withdrawn.

Applicant acknowledges that the withdrawal of finality from the Action mailed August 29, 2008 does not prevent a future imposition of “final” status.

Subject matter free of the cited documents

Applicant respectfully point out his understanding that claim 8 is not included in any rejection based upon a cited document. Accordingly, the subject matter of claim 8 is believed to be free of the documents of record. So upon resolution of the alleged indefiniteness issue, as addressed below, the claim is believed to be allowable.

First Alleged Rejection under 35 U.S.C. § 102

Claims 1-7, 16-20, and 23-26 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Hiserodt et al. (USP 6,277,368). Applicant has carefully reviewed the statement of the instant rejection as well as the cited document and respectfully traverse because no case of anticipation is present.

As previously noted, it is well settled law that anticipation requires identity between a claimed invention and a cited prior art document.

But in the instant case, the claimed methods feature the administration of a “virus or virus-like particle”. This is in sharp distinction from Hiserodt et al., who fail to teach or suggest a method including the administration of a virus or virus-like particle. Additionally, the instant claims require that the “virus or virus-like particle” have specific features as recited in the claim, where no particle with such features is reported by Hiserodt et al. This situation appears to be acknowledged by the instant rejection, which nonetheless asserts that Hiserodt et al.’s administration of cells anticipates the claimed administration of “virus or virus-like particles”. Stated differently, the cited document reports a method with administration of cells (and no virus

or virus-like particles) while the claims feature the administration of a virus or virus-like particle. This clearly does not meet the standards for anticipation.

And while Hiserodt et al. may report the use of viral vectors to produce tumor cells or tumor cell lines, the vectors used **do not** have the same features as the particle featured in the pending claims.

So based on the above, Hiserodt et al. cannot anticipate the claims, and this rejection may be properly withdrawn for these reasons alone.

However, and to emphasize an inherent feature of the claimed methods, claims 1 and 19 have been revised to expressly refer to the particles as purified, which is not taught or suggested by Hiserodt et al.

Alleged Rejection under 35 U.S.C. § 112, second paragraph

Claim 8 was rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite due to recitation of the term “tumor-derived”.

As presented above, the claim no longer includes the use of this term and so no issue of indefiniteness remains. Reconsideration and withdrawal of this rejection is respectfully requested.

Second Alleged Rejection under 35 U.S.C. § 102

Claims 21 and 22 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Nawrocki et al. (Cancer Treatment Reviews, 25:29-46, 1999). Applicant has carefully reviewed the statement of the instant rejection as well as the cited document and respectfully traverse because no case of anticipation is present.

As noted above, anticipation requires identity between a claimed invention and a cited prior art document.

But as acknowledged in the statement of the instant rejection, Nawrocki et al. reports the administration of non-tumor cells modified to express various molecules by use of a viral vector. The document is thus deficient against the pending claims because it fails to teach or suggest a method including the administration of a purified virus or virus-like particle. It is these particles

per se (and without the need for cells) that are able to induce immune responses against a tumor antigen in the context of a costimulatory molecule.

So again, the cited document reports a method with administration of cells (and no virus or virus-like particles) while the claims feature the administration of a virus or virus-like particle. Therefore, Nawrocki et al. cannot anticipate the claims, and this rejection may be properly withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned.

Respectfully submitted,

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